IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

Crl.O.P.No.27899 of 2022
and
Crl.M.P.No.17128 of 2022

1. P.Ravi,
   Managing Partner,
   M/s. Blosint Nutraceuticals

2. M/s. Blosint Nutraceuticals,
   rep. by its Managing Director
   Mr.Ravi ... Petitioners

Versus

Anbarasu ... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in S.T.C.No.808 of 2021 on the file of Judicial Magistrate No.II, Krishnagiri, Krishnagiri District.

For Petitioner	:	Mr. K.Suresh Babu for Mr. N.Vijayaraj
For Respondent	:	Ms. Jayashree Dharbar for Mr.G.Naresh Kumar

ORDER

This Criminal Original Petition has been filed seeking to quash the private complaint made in S.T.C. No.808 of 2021 on the file of Judicial Magistrate No.II, Krishnagiri, Krishnagiri Dt.

2. Heard both sides.

3. The petitioners are arrayed as accused in the complaint in S.T.C.No.808 of 2021 filed by the respondent under Sec.138 r/w Sec. 142 of Negotiable Instruments Act stating that two post dated cheques for a total sum of Rs.70,00,000/- (Rs.35,00,000/- each) dated 28.12.2020 were issued by the 1st petitioner as a partner of 2nd petitioner company and when the same were presented on 29.12.2020, the cheques were returned for the reasons "account blocked". When it was enquired, the 1st petitioner

requested the respondent/complainant to present cheques after one month. Again, he presented the cheques on 17.02.2021 and again the same were returned on 19.02.2021 for the reason "funds insufficient" well as "account blocked". Thereafter, the respondent/complainant approached the petitioners for demanding payment and further, at his request, on 18.03.2021 he presented the cheques and the same were also returned on the ground of "account blocked" on 20.03.2021. Subsequent to that, the respondent/complainant issued a notice on 17.04.2021 and the same was received by them on 20.04.2021, but they did not repay the share amount and instead of payment, they have sent a reply notice with false and frivolous allegations against him. Hence, he initiated the proceedings for dishonour of cheques. Challenging the said proceedings, now the petitioners have filed this petition praying to quash the said complaint.

4. According to the petitioners, they have filed this petition praying to quash the proceedings on the following grounds :-

(i) even prior to the initiation of proceedings against the petitioners herein for the alleged offence under Sec.138 Negotiable Instruments Act, the petitioners herein have already lodged a complaint before the Inspector of Police, District Crime Branch, Krishnagiri against the respondent/complainant herein and one Asokan for cheating through cheque theft and other reasons on 23.03.2020 and the same was registered by the police against him for the offence under Sec. 419, 420, 468, 471, 120B, 379, 294(b) and 506(i) I.P.C. in Crime No.03 of 2020 and subsequently charge sheet filed by the said police before the Judicial Magistrate No.II, Krishnagiri on 10.11.2020 and the same is pending on his file.

(ii) The court below ought to have seen that in order to escape from the clutches of law, the respondent/complainant had filed a false complaint against him with a view to harass and humiliate him in one way or other.

(iii) The court below failed to note that at no point of time, the 1st petitioner never issued any cheques in favour of respondent/complainant and the cheques were fraudulently taken by the respondent from his office and had deposited the same into his bank account and had chosen to file a false complaint as against the petitioners to enrich themselves without any basis or reasons.

(iv) The court below further failed to note that it has been clearly stated in the complaint given by the petitioners against the respondent/complainant and his associate Ashokan that he is residing at K.K.Pudhur, Krishna Nagar, Coimbatore and running a business under the name and style of Biosint Nutraceuticals from the year of 2004 at Krishnagiri SIDCO Industrial Estate and from 2018 onwards, he is running the same business in the same name at Polupalli Sidco.

(v) It is further shocked to note that A1 Anbarasu had committed fraud by opening the bank account in the name of Biosint Neutraceuticals at Tamil Nadu Mercantile Bank Ltd., Krishnagiri. As the registration number of the company with Income Tax department was expired, with an intention to cheat the petitioners, the accused persons had some how committed theft of registration number and affixed his photograph on it to show as if he is the proprietor of the said company, thereby he has cheated not only the petitioner, but also cheated the said bank.

(vi) It is pertinent to point out here that the firm, the petitioner was shifted to Polupalli in the year of 2018 and the customers of petitioners in the old address have to pay the balance amount during the period from 2016-2018 and for the purpose of getting amount from them, A2 Ashokan, who was working as Supervisor in the company of petitioner conspired together with A1 and had stolen 17 cheques from the petitioners and cheated them by fraudulent way to the tune of Rs.66,33,770/- and deposited the same into their name, thereby they have committed loss to the petitioners.

(vii) Furthermore, the petitioners came to know that the said accused persons have committed theft of raw materials worth about Rs.20 lakhs apart from committing theft of formulas and name and address of customers of petitioners, besides they have also committed theft of valuable materials to the tune of Rs.2,50,000/- apart from abusing the petitioners herein in filthy and obscene language, thereby the accused persons have committed offences punishable under Sec.420, 379, 419, 468, 471, 120-B, 294(b), 506(i) of I.P.C.

By placing the aforesaid grounds, the learned counsel for petitioners would submit that only as a counter blast for the complaint given by him against the accused persons Anbarasu and Ashokan before the police, only in order to harass the petitioners, the respondent/complainant filed the present complaint for the theft of cheques, which were already retained illegally in his custody and presented the same for collection. He would submit that the

1st petitioner had issued those cheques as a Managing Partner of the firm, but in fact, the 2nd petitioner company is not a partnership firm, it is a proprietoryship firm and the nomenclature of partnership firm was transferred and from 01.07.2017 onwards, so, M/s. Blosint Nutraceuticals is named as proprietorship and it is a not a partnership firm. To prove the same, registration certificate issued by the Government of India was produced before this court, which would clearly reveals the fact that from 01.07.2017 onwards, the 2nd petitioner is a proprietorship. Therefore, on the date of issuance of alleged cheques as claimed by the respondent/complainant in the year of 2010, the 2nd petitioner is not a partnership firm. Therefore, based on all these lacuna, learned counsel for petitioners would submit that no such partnership firm was registered as claimed by the respondent nor he along with this petitioner, not a partner in that firm and also contended that he never issued cheques as a Managing Partner of 2nd petitioner, as such no such partnership was registered in the year of 2020. Therefore, they prayed to quash the proceedings stating that by giving fabrication of records, the respondent/complainant initiated the proceedings as a counter blast and a complaint was filed by them.

5. By way of reply, the learned counsel for respondent/complainant would submit that as a managing partner of the firm, he alone issued cheque and he has no claim against 2nd petitioner/A2. However, he wanted to prosecute the 1st petitioner for the issuance of the said cheques. Accordingly, he prayed to dismiss this petition.

6. Records perused. Even assuming the argument sake, on perusal of the said alleged cheques, it contains the signature as a Managing Partner, but on perusal of registration certificate issued by the Government of India, it reveals that 2nd petitioner is not a partnership firm and it is only a proprietoryship on the alleged date of cheque. Therefore, the alleged cheques pertaining to the partnership firm as claimed by the petitioners is not supported with any material document to establish the fact that on the date of issuance of alleged cheques, there was a partnership firm exists. Even on perusal of records produced on the side of respondent/complainant, while filing the complaint before the trial court, there is no document produced in support of existence of partnership firm, on the other hand, entire facts reveals that the 1st petitioner claimed himself as one of the partner, which was not in existence. Therefore, without any material, the

respondent/complainant initiated the proceedings against the petitioners. Hence, the proceedings initiated against them is liable to be quashed. Accordingly, this Criminal Original Petition is allowed and the proceedings initiated in a complaint in S.T.C.No.808 of 2021 on the file of Judicial Magistrate No.II, Krishnagiri is quashed. Consequently, connected Criminal Miscellaneous Petition is closed.

28.03.2024

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T.V.THAMILSELVI, J.

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